

Serial No.: 10/657,475
Art Unit 2189

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed June 28, 2005. Reconsideration and allowance of the application and pending claims 1-20, as presented, are respectfully requested.

1. Claim Objections

Claims 2, 7, 12, and 17 are objected to because of informalities cited in the Office Action. In particular, the Office Action suggests that the term "fibre" should be replaced with --fiber--.

Applicants respectfully traverse the objection to the claims for at least the following reasons. MPEP §608.01 states that "Examiners should not object to the specification and/or claims in patent applications merely because applicants are using British English spellings (e.g., colour) rather than American English spellings. It is not necessary to replace the British English spellings with the equivalent American English spellings in the U.S. patent applications. Note that 37 CFR 1.52(b)(1)(ii) only requires the application to be in the English language. There is no additional requirement that the English must be American English."

Since British English spellings are permissible in the claims, and since the objected to language is proper British English, Applicants respectfully request that the objection be withdrawn.

2. Response to Rejection of Claims 1, 3-6, 8-11, 13-16, and 18-20 Under 35 U.S.C. § 102

Claims 1, 3-6, 8-11, 13-16, and 18-20 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *Nagasawa* (U.S. Patent No. 6,845,435). Applicants respectfully traverse this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed subject matter must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e). In the present case, not every feature of the claimed subject matter is represented in the

Serial No.: 10/657,475

Art Unit: 2189

Nagasawa reference. Applicants discuss the *Nagasawa* reference and Applicants' claims in the following.

a. Claim 1

As provided in independent claim 1, Applicants claim:

A method for backing up information, comprising:
receiving by a data-directing device data to be backed up, the data-directing device being communicatively coupled to a data-caching device and to a first backup storage device;
storing the received data by the data-caching device;
storing the received data by the first backup storage device;
configuring a switch to communicatively couple the data-directing device to a second backup storage device responsive to a backup operation failure; and
transferring data stored by the data-caching device to the second backup storage device via the data-directing device.

(Emphasis added).

Applicants respectfully submit that independent claim 1 is allowable for at least the reason that *Nagasawa* does not disclose, teach, or suggest at least the feature of "configuring a switch to communicatively couple the data-directing device to a second backup storage device responsive to a backup operation failure," as recited and emphasized above in claim 1.

Rather, *Nagasawa* appears to disclose at most a secondary disk device that backs up data of a primary disk device. For example, *Nagasawa* explains that "Backup data ("secondary data") is expected to be located as far away from the data ("primary data") of a working system." Col.1, lines 25-27. Therefore, *Nagasawa* fails to teach or suggest a system or method comprising a "first backup storage device" and a "second backup storage device," as described in claim 1.

Further, *Nagasawa* fails to teach or suggest at least "configuring a switch to communicatively couple the data-directing device to a second backup storage device responsive to a backup operation failure," as recited in claim 1. In contrast, *Nagasawa* appears to disclose at most a system where "update of primary data can be temporarily suspended after the recognition of a probable occurrence of a hazardous event. . . . Then, the secondary data can be updated quickly or exclusively, in order to avoid inconsistent copies of secondary data." Cols. 1-2, lines 66-6. (Emphasis added). Hence, *Nagasawa* does not teach or suggest all of the features of claim 1.

Serial No.: 10/657,475
Art Unit: 2189

Accordingly, *Nagasawa* fails to anticipate claim 1 for at least these reasons, and the rejection should be withdrawn.

b. Claims 3-5

Because independent claim 1 is allowable over the cited art of record, dependent claims 3-5 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 3-5 contain all the steps and features of independent claim 1. For at least this reason, the rejections of claims 3-5 should be withdrawn.

c. Claim 6

As provided in independent claim 6, Applicants claim:

A method for backing up information, comprising:
receiving by a first data-directing device data to be backed up,
the first data-directing device being communicatively coupled to a first data-caching device and to a first backup storage device;
storing the received data by the first data-caching device;
storing the received data by the first backup storage device;
configuring a switch to communicatively couple the first data-caching device to a second data-directing device responsive to a backup operation failure; and
transferring data stored by the first data-caching device to a second backup storage device via the second data-directing device.

(Emphasis added).

Applicants respectfully submit that independent claim 6 is allowable for at least the reason that *Nagasawa* does not disclose, teach, or suggest at least the feature of "configuring a switch to communicatively couple the first data-caching device to a second data-directing device responsive to a backup operation failure" and "transferring data stored by the first data-caching device to a second backup storage device via the second data-directing device," as recited and emphasized above in claim 6.

Rather, *Nagasawa* appears to disclose at most a secondary disk device that backs up data of a primary disk device. For example, *Nagasawa* explains that "Backup data ("secondary data") is expected to be located as far away from the data ("primary data") of a working system." Col.1, lines 25-27. Therefore, *Nagasawa* fails to teach or suggest a system or method comprising a "first backup storage device" and

Serial No.: 10/657,475

Art Unit: 2189

a "second backup storage device," and accordingly, does not suggest at least "transferring data stored by the first data-caching device to a second backup storage device via the second data-directing device," as recited in claim 6.

Further, *Nagasawa* fails to teach or suggest at least "configuring a switch to communicatively couple the first data-caching device to a second data-directing device responsive to a backup operation failure," as recited in claim 6. (Emphasis added). In contrast, *Nagasawa* appears to disclose at most a system where "update of primary data can be temporarily suspended after the recognition of a probable occurrence of a hazardous event. . . . Then, the secondary data can be updated quickly or exclusively, in order to avoid inconsistent copies of secondary data." Cols. 1-2, lines 66-6. (Emphasis added). Hence, *Nagasawa* does not teach or suggest all of the features of claim 6.

Accordingly, *Nagasawa* fails to anticipate claim 6 for at least these reasons, and the rejection should be withdrawn.

d. Claims 8-10

Because independent claim 6 is allowable over the cited art of record, dependent claims 8-10 (which depend from independent claim 6) are allowable as a matter of law for at least the reason that the dependent claims 8-10 contain all the steps and features of independent claim 6. For at least this reason, the rejections of claims 8-10 should be withdrawn.

e. Claim 11

As provided in independent claim 11, Applicants claim:

A system for backing up information, comprising:
a data-directing device configured to receive data to be backed up;
a first backup storage device that is communicatively coupled to the data-directing device and that is configured to store the received data;
a data-caching device that is coupled to the data-directing device and that is configured to store the received data;
a switch that is configured to communicatively couple the data-directing device to a second backup storage device responsive to a backup operation failure, wherein data stored in the data-caching device is transferred to the second backup storage device via the data-directing device responsive to the backup operation failure.

Serial No.: 10/657,475
Art Unit: 2189

(Emphasis added).

Applicants respectfully submit that independent claim 11 is allowable for at least the reason that *Nagasawa* does not disclose, teach, or suggest at least the feature of "a switch that is configured to communicatively couple the data-directing device to a second backup storage device responsive to a backup operation failure, wherein data stored in the data-caching device is transferred to the second backup storage device via the data-directing device responsive to the backup operation failure," as recited and emphasized above in claim 11.

Rather, *Nagasawa* appears to disclose at most a secondary disk device that backs up data of a primary disk device. For example, *Nagasawa* explains that "Backup data ("secondary data") is expected to be located as far away from the data ("primary data") of a working system." Col.1, lines 25-27. Therefore, *Nagasawa* fails to teach or suggest a system or method comprising a "first backup storage device" and a "second backup storage device," as described in claim 11.

Further, *Nagasawa* fails to teach or suggest at least "a switch that is configured to communicatively couple the data-directing device to a second backup storage device responsive to a backup operation failure, wherein data stored in the data-caching device is transferred to the second backup storage device via the data-directing device responsive to the backup operation failure," as recited in claim 11. In contrast, *Nagasawa* appears to disclose at most a system where "update of primary data can be temporarily suspended after the recognition of a probable occurrence of a hazardous event. . . . Then, the secondary data can be updated quickly or exclusively, in order to avoid inconsistent copies of secondary data." Cols. 1-2, lines 66-6. (Emphasis added). Hence, *Nagasawa* does not teach or suggest all of the features of claim 11.

Accordingly, *Nagasawa* fails to anticipate claim 11 for at least these reasons, and the rejection should be withdrawn.

f. Claims 13-15

Because independent claim 11 is allowable over the cited art of record, dependent claims 13-15 (which depend from independent claim 11) are allowable as a matter of law for at least the reason that the dependent claims 13-15 contain all the

Serial No.: 10/657,475
Art Unit: 2189

elements and features of independent claim 11. For at least this reason, the rejections of claims 13-15 should be withdrawn.

g. Claim 16

As provided in independent claim 16, Applicants claim:

A system for backing up information, comprising:
a first data-directing device configured to receive data to be backed up;
a first backup storage device that is communicatively coupled to the first data-directing device and that is configured to store the received data;
a data-caching device that is coupled to the first data-directing device and that is configured to store the received data;
a switch that is configured to communicatively couple a second data-directing device to the first data-caching device responsive to a backup operation failure, wherein data stored in the first data-caching device is transferred to a second backup storage device via the second data-directing device responsive to the backup operation failure.

(Emphasis added).

Applicants respectfully submit that independent claim 16 is allowable for at least the reason that *Nagasawa* does not disclose, teach, or suggest at least the feature of "a switch that is configured to communicatively couple a second data-directing device to the first data-caching device responsive to a backup operation failure, wherein data stored in the first data-caching device is transferred to a second backup storage device via the second data-directing device responsive to the backup operation failure," as recited and emphasized above in claim 16.

Rather, *Nagasawa* appears to disclose at most a secondary disk device that backs up data of a primary disk device. For example, *Nagasawa* explains that "Backup data ("secondary data") is expected to be located as far away from the data ("primary data") of a working system." Col.1, lines 25-27. Therefore, *Nagasawa* fails to teach or suggest a system or method comprising a "first backup storage device" and a "second backup storage device," as described in claim 16.

Further, *Nagasawa* fails to teach or suggest at least "a switch that is configured to communicatively couple a second data-directing device to the first data-caching device responsive to a backup operation failure, wherein data stored in the first data-caching device is transferred to a second backup storage device via the second data-

Serial No.: 10/657,475
Art Unit: 2189

directing device responsive to the backup operation failure," as recited in claim 16. In contrast, *Nagasawa* appears to disclose at most a system where "update of primary data can be temporarily suspended after the recognition of a probable occurrence of a hazardous event. . . . Then, the secondary data can be updated quickly or exclusively, in order to avoid inconsistent copies of secondary data." Cols. 1-2, lines 66-6. (Emphasis added). Hence, *Nagasawa* does not teach or suggest all of the features of claim 16.

Accordingly, *Nagasawa* fails to anticipate claim 16 for at least these reasons, and the rejection should be withdrawn.

h. Claims 18-20

Because independent claim 16 is allowable over the cited art of record, dependent claims 18-20 (which depend from independent claim 16) are allowable as a matter of law for at least the reason that the dependent claims 18-20 contain all the elements and features of independent claim 16. For at least this reason, the rejections of claims 18-20 should be withdrawn.

3. Response to Rejections of Claims 2, 7, 12, and 17 Under 35 U.S.C. §103

In the Office Action, claims 2, 7, 12, and 17 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Nagasawa* in view of *Kitamura* (U.S. Patent Publication No. 2005/0044163).

It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).


Applicants submit that independent claims 1, 6, 9, 11, and 16 contain features that are not disclosed in *Nagasawa*, as previously discussed. Further, *Kitamura* is legally inadequate to cure the deficiencies of the aforementioned reference. Accordingly, claims 2, 7, 12, and 17 (which depend from respective independent claims 1, 6, 11, and 16) are allowable over the cited art for at least this reason.

Serial No.: 10/657,475
Art Unit: 2189

CONCLUSION

For at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,


Charles W. Griggers
Reg. No. 47,283